IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Crl.MC.No. 2211 of 2007()

CC.327/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER/ACCUSED NO.7

GIRISH CHANDRAN
AGED 39 YEARS,
S/O.RAMACHANDRAN
VELLUR.P.O.PAYYANNUR
KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENT/COMPLAINANT:

STATE - REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2211 of 2007

Dated this the 10th day of July 2007

O R D E R

The petitioner is the seventh accused in a prosecution inter alia under Section 448 read with 149 I.P.C. The petitioner was available for trial as the seventh accused. But after the completion of the prosecution evidence before the final disposal of the case, the petitioner could not continue to appear before the learned Magistrate. The learned Magistrate therefore split up the case against the petitioner. Of the co-accused, one was convicted, others were acquitted, the learned Magistrate has issued non-bailable warrant to procure the presence of the petitioner.

2. The learned counsel for the petitioner has come to this court now with the prayer that powers under Section 482 Cr.P.C may be invoked in his favour. He, first of all, submits that the proceedings against him may be quashed. Secondly he contends that in the alternative, the petitioner may be permitted to surrender before the learned Magistrate. He may be directed to be released on bail. The case against him may be directed to be disposed of expeditiously.

3. The learned counsel for the petitioner relying on the judgment rendered by the learned Magistrate contends that there is

no evidence against the petitioner and that the acquittal of the co-accused on the same evidence must entitle him also to acquittal. The learned counsel for the petitioner submits that the decision in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] is not squarely applicable as the prayer is to quash the proceedings after the entire evidence has been adduced.

4. I find it not possible to accept the said request to invoke the powers under Section 482 Cr.P.C. Of course, there are incidental observations about the evidence against the petitioner herein also in the judgment rendered by the learned Magistrate. But it is evident that the learned Magistrate was not called upon to and did not pointedly advert to the complicity of the petitioner in the said judgment (a copy of which is produced as Annexure A1). I am, in these circumstances, not satisfied that this is a proper case where powers under Section 482 Cr.P.C can be invoked to quash the proceedings against the petitioner. The petitioner must also appear and stake his claim for acquittal on the basis of the materials available before the learned Magistrate.

5. In the result, this petition is dismissed but I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to consider the application for bail and pass appropriate

orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. The learned counsel for the petitioner submits that the petitioner, employed abroad, has come on leave now. It is prayed that there may be a direction for expeditious disposal of the case as the petitioner has only a period of one month to remain in India. Thereafter, he has to return to his place of employment abroad. I am satisfied that direction can be issued to the learned Magistrate to expeditiously complete the proceedings against the petitioner. If the final disposal of the case does not take place before the expiry of his leave, the petitioner can apply for exemption from personal appearance. All offences being bailable, I am satisfied that the learned Magistrate must consider such application also on merits, in accordance with law and expeditiously.

7. This Criminal Miscellaneous Case is, in these circumstances, dismissed with the above observations.

8. Hand over copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007